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Changes coming for bill on state Treasurer's legal counsel

A bill intended to allow the Office of the State Treasurer to hire his own attorney to handle complex financial cases was held by a House committee on Jan. 27 after its sponsor raised concerns the legislation would have more sweeping effects.

The decision to hold H2103 came from Rep. Sam Crump, the chairman of the House Government Committee. Crump also was the prime sponsor of the proposal, which State Treasurer Dean Martin told committee members could cut costs and help end a longstanding "political turf war."

In official capacity, Martin is represented by the Attorney General's Office, but Crump's bill would attach the Treasurer's Office to a list of nine agencies allowed to hire and pay for their own representation.

An accompanying provision was touted by Martin as a means to ensure independent attorneys could be hired only to handle complex cases such as securities, bankruptcy matters and to offer financial advice.

However, House analysts contested Martin's translation of the bill. They said the measure, as written, would allow the state treasurer to secure lawyers separate from the Attorney General's Office for any matters.

David Gass, a legislative liaison for the Attorney General Terry Goddard, told committee members the option to hire outside legal counsel should not be extended to the Treasurer's Office, which conducts business with almost all state agencies on a daily basis.

The frequent interaction - and the prospect of differing opinions on legal matters - can provide the foundation for interagency conflict, he said.

"You create a conflict that's statewide," Gass said.

Yet, Martin said the benefits to the state presented by the law change are apparent. State law dictates the attorney general is entitled to collect a 35-percent fee on recovered funds, an amount Martin regards as outlandish and far more expensive than bills that would be incurred through specialized private-sector attorneys.

Crump said he will amend the bill and give it another try.

"Let's get it right and bring it back," he told members of the committee.

The issue of the treasurer's access to independent counsel stems from a years-long dispute between Goddard and Martin over a legal bill Martin's office was asked to pay in return for money recouped in a national fraud settlement.

The fraud, committed in 2002 by National Century Financial Enterprises, cost Arizona governments approximately \$131 million. Two-hundred local Arizona governmental entities and many governments in other states invested in NCFE, which made loans to inner-city Medicare hospitals, before collapsing in 2002 in a fraud scandal involving \$3 billion in lost investments.

After the legal battle, then-Chief Deputy Treasurer Blaine Vance refused to transfer payment for the attorney general's legal services without written approval from the state solicitor general. But in June of 2006, the state Treasurer's Office agreed to pay the Attorney General's Office \$1.9 million for legal expenses associated with recouping the lost investments.

The payment was not disclosed to the state Board of Investment, which oversees the state's investment portfolio.

The deal came months after agents with Goddard's office seized computers, 15,000 pages of documents and other materials from the Treasurer's Office as part of an investigation into allegations that Petersen had committed several felonies by using his office to promote character-building teaching materials sold by Character First.

Initially, Petersen faced charges of theft, fraud and conflict of interest. But weeks after resigning in October 2006, he pleaded guilty to a single misdemeanor count for failing to disclose a \$4,200 commission he received for selling Character First products.

Martin, as a candidate running for treasurer in 2006, cast suspicions on the payment and criticized Petersen's sentence, which included three years of probation, as a "slap on the wrist."

Goddard has defended the payment repeatedly; pointing out that state law authorizes the Attorney General's Office to receive 35 percent of all state funds it recovers.

Upon taking office, Martin stopped issuing Goddard's office a portion of the fraud settlement, which was being distributed to the state periodically, and asked Maricopa County Attorney Andrew Thomas and Maricopa County Sheriff Joe Arpaio to investigate the payment.

Martin has asked for separate legal counsel to review the deal and to conclude how much the Attorney General's Office should be paid. The treasurer has stated on numerous occasions that a Texas law firm helped recover funds from the NCFE case, and has said he is not sure whether Goddard's office is entitled to the full 35 percent.

The state treasury lost \$14.3 million to NCFE. So far, the state has recovered about 53 percent of \$131 million in losses, Martin said.

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